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November 30, 2005

HAND DELIVERED

Hon. Liane M. Randolph, Chair
Hon. Sheridan Downey III, Commissioner
Hon. Philip Blair, Commissioner
Hon. Ray Remy, Commissioner
Hon. Gene Huguenin, Commissioner
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

RE: Agenda Item No. 8 - December 1, 2005 Meeting - Pre-Noticed Regulation 18534

Dear Chair Randolph and Commissioners:

The California Republican Party ("CRP") supports the noticing of proposed Regulation 18534.

The Regulation's features are patterned after the CRP's own accounts and protocols for compliance with Proposition 34. On behalf of CRP, I had suggested to the FPPC's enforcement staff in connection with the 21st Century matter that the FPPC consider the adoption of such a regulation to aid the regulated community. At that time, in 2004, the FPPC had issued no regulations and virtually no advice on party committee issues under Proposition 34 in the three years this important law had been in effect.¹

CRP maintains two separate non-federal accounts, a Proposition 34 Candidate Support Account and a Non-Candidate Support Account. Contributions designated for purposes other than contributing to a candidate for state elective office or which exceed the applicable annual contribution limit under Government Code Section 85303(b) (now \$27,900) are placed in the non-candidate support account; contributions designated for state candidate support are placed

¹ One of Proposition 34's major premises was to promote the role of political parties, and it does so in a number of important ways. This is to our knowledge the first Proposition 34 regulation that addresses an issue of direct concern to the political parties.

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directly into the Proposition 34 Candidate Support Account. Appropriate transfers are made consistent with the underlying premise that contributions raised that are not subject to the Section 85303(b) limits are not used for state candidate support purposes.

I will be prepared to discuss these issues in more detail at the Commission meeting and at the meeting at which Proposed Regulation 18534 is noticed for adoption.

For the record, I would like to take issue with a number of statements and innuendo contained in the Staff Memorandum that are false, misleading and unfair relative to the discussion of the agenda item. It is unfortunate that the Staff included these statements and innuendo in an otherwise fine presentation.

First, the implication of "money laundering" is totally at odds with the facts as developed by all witnesses in the 21st Century investigation. There was no evidence that 21st Century earmarked any contribution for a particular candidate or suggested earmarks to any central committee or other recipient of its contributions. This was never a money laundering case.

Second, the implication that any central committee which received 21st Century contributions and made contributions to candidates in other jurisdictions committed anything improper is false. The testimony of all central committee officials interviewed in connection with this matter was that (a) they made independent contribution decisions based upon information they obtained and evaluated concerning competitive legislative races; and (b) they were required by law and their own party bylaws to make these decisions.

Third, the implication that any central committee "hindered" the FPPC's investigation is totally at odds with the facts. In fact, there were numerous interviews of officers of the fourteen central committees (including many in urban counties, not just rural counties), all of whom were very cooperative with the investigators. To the extent the comment was directed at the fact that some of the committees had only one bank account for their state committees to accept contributions, this fact was not a hindrance to the investigation: it simply required the investigators to identify and add up the contributions, by contributor, and then compare the aggregate contribution totals with the committees' reported state candidate support expenditures. If this fact constitutes a "hindrance" to investigation, just imagine what adoption of the draft

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regulation in Agenda Item No. 11 (that is the subject of the proposed FEC Advisory Opinion Request) would be?

Fourth, the issue of whether two of the three central committees actually violated the Political Reform Act was much more complicated than the Staff Memorandum suggests. The enforcement stipulations (which were agreed to by several of these committees to save the expense of litigating what appeared to be an argument over grounds of settlement rather than the fines), recite that the committees violated the law by commingling 21st Century contributions that exceeded the (then) \$25,000 limit into accounts containing Proposition 34-limited contributions.

The committees contended that if you added up all the contributions that could have been used for state candidate support and compared that with what they spent on state candidate support, they either did not expend more than they could have spent for state candidate support or that if they had overspent, it was a relatively small amount (Kern); or that the enforcement staff treated some generic expenditures as state candidate support and the transfers from other central committees as impermissible state candidate support funds (thus jiggering the equation to establish a violation) (San Joaquin.) However, the enforcement staff insisted on taking its approach in the stipulations, one that highlighted the 21st Century contributions but gave short shrift to thousands of dollars of contributions from others that were made within Section 85303(b) limits. As noted, these committees accepted the fines and were required to stipulate to the grounds, with which they didn't agree.

Finally, and this is a separate issue not related to the false and misleading statements: the claim that Proposition 34 clearly prohibits a recipient committee from using unlimited contributions under Section 85303(c) to make contributions to another committee's (limited) candidate support account under Section 85303(a) or (b), is not universally accepted. We did not and do not read it that way, and we understand the other major party's counsel may not either.

Very truly yours,


Charles H. Bell, Jr.